

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“PAO”) and referred to the Disciplinary Committee under section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

The Respondent

RESPONDENT

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant against the Respondent, who is a certified public accountant. Section 34(1)(a)(x) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 9 July 2013 (“the Complaint”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-
 - a) On 6 occasions between November 2008 and February 2011, the Respondent, inside his office in Central, indecently assaulted 2 colleagues by brushing his hand against their buttocks.
 - b) The Respondent was charged in a Magistrate's Court with 12 charges of indecent assault on the above 2 colleagues and another one. He pleaded not guilty to all the charges.
 - c) On 30 November 2011, the Respondent was convicted after trial of 6 charges involving the said 2 colleagues while acquitted of the remaining 6 charges involving another colleague.

- (d) The Magistrate sentenced the Respondent to a total of 19 weeks of imprisonment for the 6 charges.
 - (e) The Respondent's appeal to the Court of First Instance was dismissed, and the Court of Final Appeal has refused leave to appeal.
3. In his written submissions dated 23 June 2014, the Respondent stated that:
- "In order to save the Disciplinary Committee's time and costs, I would like to suggest that the remaining steps set out in paragraph 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with."
4. The Complainant responded on 11 July 2014 that parties may suggest and the Committee may agree that the matter be determined on paper without the need for an oral hearing.
5. The Committee agreed by majority that an oral hearing is not necessary. The Committee is not to challenge the criminal conviction that was upheld by the Court of Appeal. The Committee considered the facts and arguments presented on papers are sufficient.
6. In reviewing this case, the question we asked ourselves is whether the indecent assault amounts to dishonorable conduct contrary to section 34(1)(a)(x) of the PAO? When we say indecent assault, we are referring to the touching of the buttocks of two female victims. The Committee noted the fact that the Respondent was convicted of 6 counts of indecent assault and sentenced to 19 weeks of imprisonment.
7. Respondent admitted his criminal conviction but claimed miscarriage of justice. He argued that he never deliberately touched the victims and it was an accident, repeating the same arguments that his lawyers made before the magistrate, the court of Appeal and the CFA Appeals Committee. The Committee noted the Respondent's appeal to the Court of First Instance was dismissed and the Court of Final Appeal has refused leave to appeal. In the absence of any fresh evidence or other exceptional circumstances that were not already presented in Respondent's appeal, the Committee is in no position to challenge the criminal conviction that was upheld by the Court of Appeal. The Committee considered all the facts and written submissions from both parties and decided, on the balance of probability, the Respondent is guilty of dishonorable conduct. The Committee considered that the nature of the act "would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession".
8. By a letter dated 7 October 2014 addressed to the Complainant and the Respondent, the Clerk to the Committee, under the direction of the Committee, informed the parties that (i) the steps set out in Rules 26 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with; (ii) the

Committee found that the complaint against the Respondent is substantiated and established; and (iii) they should make written submissions to the Committee as to the sanctions and costs. The Respondent and the Complainant filed their submissions on 27 October 2014 and 28 October 2014 respectively.

9. Having considered the facts, the nature and gravity of the offence, submissions from both Complainant and Respondent, having regards to the personal circumstances of the Respondent and past cases with similar features, the Committee orders that:-
 - 1) the name of the Respondent be removed from the register of certified public accountants for nine months effective from [42] days from the date hereof under section 35(1)(a) of the PAO; and
 - 2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$47,324 under section 35(1)(iii) of the PAO.

Dated the 16th day of January 2015